

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 GREGORY JAMES RAGER,

Case No.: 2:24-cv-00248-APG-EJY

4 Petitioner,

Order Dismissing Action

5 v.

6 KEVIN McMAHILL,

7 Respondent.

8
9 This action is a petition for a writ of habeas corpus under 28 U.S.C. § 2241 initiated, *pro*
10 *se*, on February 5, 2024 by Gregory James Rager, who is incarcerated at the Clark County
11 Detention Center (CCDC). I will summarily dismiss this action because Rager has not paid the
12 filing fee or applied to proceed *in forma pauperis*; he has not exhausted available state court
13 remedies; his petition is barred by the *Younger* abstention doctrine; and to the extent he
14 complains of conditions of his confinement, his claims must be brought as a civil rights action
15 under 42 U.S.C. § 1983, rather than a habeas corpus action under 28 U.S.C. § 2241.

16 As I understand his petition (ECF No. 1), Rager claims that he is being held as a pretrial
17 detainee but that his detention is illegal because the charges against him have been dismissed.
18 ECF No. 1 at 2–3, 7–8. In addition, he claims that “medical experiments [are] being conducted
19 on [his] non-consenting person in an ongoing criminal justice research project;” he claims that
20 the medical experiments involve “the introduction of nano particles into the facility through air
21 vents.” ECF No. 1 at 2–3; *see also id.* at 7–8.

22 As an initial matter, Rager has not paid the \$5 filing fee for this action, and he has not
23 filed an application to proceed *in forma pauperis*. In letters received from Rager at the Clerk’s

1 Office (ECF Nos. 1-1 and 1-2), he indicates that he may have attempted to pay the filing fee.
2 The record shows that, as of the date of this order, the court has not received proper payment of
3 the filing fee. Looking past the matter of the payment of the filing fee, I find that this action
4 must be dismissed for other more fundamental reasons.

5 “[A] state prisoner must normally exhaust available state judicial remedies before a
6 federal court will entertain his petition for habeas corpus.” *Picard v. Connor*, 404 U.S. 270, 275
7 (1971) (citations omitted). The exhaustion requirement is based on the policy of federal-state
8 comity, and is intended to allow state courts the initial opportunity to correct constitutional
9 violations. *See id.* To exhaust a claim, a petitioner must fairly present the claim to the highest
10 available state court and give that court the opportunity to address and resolve it. *Duncan v.*
11 *Henry*, 513 U.S. 364, 365 (1995) (citing *Picard*, 404 U.S. at 275); *Keeney v. Tamayo-Reyes*, 504
12 U.S. 1, 10 (1992). Although 28 U.S.C. § 2241 does not explicitly require exhaustion, federal
13 courts generally require, as a prudential matter, that habeas petitioners exhaust available
14 administrative and judicial remedies before seeking relief under § 2241. *See Ward v. Chavez*,
15 678 F.3d 1042, 1045 (9th Cir. 2012); *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004).
16 According to his petition, Rager has presented his claims to officers at the CCDC and to the state
17 district court, but not to any state appellate court. *See* Petition, ECF No. 1 at 3–4. Where the
18 form habeas petition asks why he has not appealed further, Rager states: “No time, Petitioner
19 prays this Court will act swiftly.” *Id.* at 4. It is plain that Rager has not exhausted his claims in
20 state court. His wish for his claims to be adjudicated swiftly does not excuse his failure to
21 exhaust his claims in state court.

22 In *Younger v. Harris*, 401 U.S. 37 1971), the Supreme Court held that the principles of
23 comity and federalism preclude federal courts from interfering with ongoing state criminal

1 proceedings absent extraordinary circumstances. *See Younger*, 401 U.S. at 45–46; *Brown v.*
2 *Ahern*, 676 F.3d 899, 900–01 (9th Cir. 2012). *Younger* abstention is called for when state-court
3 criminal proceedings are ongoing, implicate important state interests, and provide an adequate
4 opportunity to raise the defendant’s claims. *See Middlesex Cty. Ethics Comm. v. Garden State*
5 *Bar Ass’n*, 457 U.S. 423, 432 (1982); *Kenneally v. Lungren*, 967 F.2d 329, 331–32 (9th Cir.
6 1992). Rager’s criminal prosecution implicates important state interests, and there is no
7 indication that he is without adequate opportunity to assert his claims in that case. Rager has not
8 described any extraordinary circumstances requiring this court to adjudicate his claims despite
9 the *Younger* abstention doctrine. I must abstain from entertaining Rager’s habeas petition.

10 Furthermore, to the extent Rager claims medical experiments are being conducted on him
11 without his consent, his claims concern the conditions of his confinement and are not cognizable
12 as federal habeas corpus claims. Rather, such claims must be brought, if at all, under 42 U.S.C.
13 § 1983. *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) (“[A section] 1983 action is a proper
14 remedy for a state prisoner who is making a constitutional challenge to the conditions of his
15 prison life, but not to the fact or length of his custody.”); *see also Nettles v. Grounds*, 830 F.3d
16 922, 933 (9th Cir. 2016) (“[P]risoners may not challenge mere conditions of confinement in
17 habeas corpus.”) (citing *Crawford v. Bell*, 599 F.2d 890, 891–92 (9th Cir. 1979)); *Badea v. Cox*,
18 931 F.2d 573, 574 (9th Cir. 1991) (“A civil rights action ... is the proper method of challenging
19 ‘conditions of ... confinement.’”) (citing *Preiser*, 411 U.S. at 484). If Rager wishes to challenge
20 the conditions of his confinement, he must initiate a new action, a civil rights action under 42
21 U.S.C. § 1983, and he must do so using the form for a § 1983 complaint provided by the court.

22 I THEREFORE ORDER that this action is **DISMISSED**.
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1 I FURTHER ORDER that, as reasonable jurists would not find the rulings in this order to
2 be debatable, the petitioner is denied a certificate of appealability.

3 I FURTHER ORDER the Clerk of the Court to enter judgment accordingly and close this
4 case.

5 I FURTHER ORDER the Clerk of the Court to send to the petitioner a copy of this order,
6 the approved form for filing a complaint under 42 U.S.C. § 1983, instructions for the same, and a
7 copy of his petition in this case (ECF No. 1).

8 Dated: February 7, 2024.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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